

In The
Supreme Court of the United States

October Term, 1995

BARBARA SMILEY,

Petitioner,

v.

CITIBANK (SOUTH DAKOTA), N.A.,

Respondent.

On Writ Of Certiorari To The
California Supreme Court

JOINT APPENDIX

MICHAEL D. DONOVAN
(Counsel of Record)
PATRICK J. GRANNAN
PAMELA P. BOND
ROBIN B. HOWALD
CHIMICLES, JACOBSEN
& TIKELLIS
361 W. Lancaster Avenue
Haverford, PA 19041
(610) 642-8500

MICHAEL P. MALAKOFF
MALAKOFF, DOYLE
& FINBERG, P.C.
The Frick Building,
Suite 200
Pittsburgh, PA 15219
(412) 281-8400

Counsel for Petitioner

RICHARD B. KENDALL
(Counsel of Record)
MICHAEL H. STRUB, JR.
SHEARMAN & STERLING
777 S. Figueroa Street
34th Floor
Los Angeles, CA 90017
(213) 239-0300

LOUIS R. COHEN
CHRISTOPHER LIPSETT
WILMER, CUTLER
& PICKERING
2445 M Street, N.W.
Washington, DC 20037-1420
(202) 663-6000

Counsel for Respondent

**Petition For Certiorari Filed November 30, 1995
Certiorari Granted January 19, 1996**

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The following opinions, decisions, judgments, orders
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RELEVANT DOCKET ENTRIES

SUPERIOR COURT LOS ANGELES COUNTY

BC 59202

SMILEY BARBARA ETC GREENFIELD-CHIMICLES

Attorney

CITIBANK N A

Attorney

NATURE OF ACTION:

MISC CIVIL COMPLAINT-MONEY INVOLVED
CODE 0601

REPORTER/ERM

REPORTER/ERM

Trial Judge:

<u>YEAR</u>	<u>MONTH</u>	<u>DAY</u>	<u>PROCEEDINGS</u>	<u>FILED DOC</u>	<u>FEES</u>
1992	JUL	07	COMPLAINT FILED AND SUMMONS ISSUED		128.00
92	8	5	DEFTS NTC OF FILING OF NTC OF REMOVAL IN US. DISTRICT COURT	✓	
93	4	28	DEFTS. NOTICE OF MOT OF CITIBANK FOR JUDGT. ON PLEADING. 5-14-93 9:00 D. 30		14.00
93	4	28	MEMORANDUM OF POINTS & AUTHORITIES	✓	

93	4	28	DECLA. OF MICHAEL H. STRUB IN SUPPORT OF MOT	✓
93	6	22	MO. CONT'D 7/6/93 9C 732	
93	7	6	MOT. OF DEF FOR JUDG. MO. DENIED	
93	7	8	NTC. OF RULING ON MO. JUDGMENT	
93	9	14	AMENDED RULING AFTER WRT. OF MANDATE	
93	9	24	NTC. TO ATTY. IN RE NTC. OF APPEAL	
93	10	1	NTC. OF ELECTION TO PROCEED BY APPENDIX IN LIEU OF CLRK'S TRANSCRIPT.	✓
93	12	3	REMITTITER [sic] W./ OPINION D-CA ORDER DISMISSING PETITION	✓
94	7	13	OPINION FROM D.C.A.	✓

94	9	19	VERIFIED MEMO OF COST	✓	
94	10	7	PLTF MOT TO TAX COSTS (10.28.94 8:30 D-32	✓	14.00
94	10	7	DECLA OF PATRICK J. GRANNAN	✓	
94	10	7	MEMO PTS AND AUTH	✓	
94	10	7	PROOF OF SERVICE	✓	
94	10	21	OPP. TO PLTFS. MO. TAX		
94	10	28	MO. GRANTED		
95	10	16	REMITTITUR W/OPINION D-CA JUDGT AFF	✓	
95	11	13	VERIFIED MEMO OF COSTS	✓	
96	1	2	MEMO OF COST ON APPEAL	✓	

U.S. District Court
Central District of California (Los Angeles)
CIVIL DOCKET FOR CASE #: 92-CV-4688

Smiley v. Citibank Filed: 8/5/92

Assigned to:

Judge David V. Kenyon Jury demand: Defendant

Referred to: Discovery Elgin Edwards

Demand: \$50,000

Nature of Suit: 190

Lead Docket: None

Jurisdiction: Diversity

Dkt# in Sup Crt LA is 8C059202

Cause: 28:1441 Petition for Removal - Injunctive/
Declaratory Relief

BARBARA SMILEY,
On behalf of Herself
& All Others
Similarly Situated
plaintiff

Patrick J Grannan
[COR LD NTC]
Greenfield & Chimicles
300 S Grand Avenue
Suite 1640
Los Angeles, CA 90071
213-626-6100

v.

CITIBANK, (South
Dakota), N.A.
defendant

Richard B Kendall
[COR LD NTC]
Shearman and Sterling
725 S Figueroa Street
Twenty-First Floor
Los Angeles, CA 90017
213-239-0300

William M. Burke
Richard B. Kendal
Michael H. Strub, Jr.
Shearman & Sterling
725 S. Figueroa St.,
21st Floor
Los Angeles, CA 90017
(213) 239-0300
for dfts
CitiBank (South Dakota),
N.A.

DATE	NR.	PROCEEDINGS
		CV92-4688 KN (Ex)

- | | | |
|---------|-----|--|
| 8-5-92 | sb | 1. Ntc of Rmvl of actn from Superior Crt County od [sic] Los Angeles w/copy of sms & cmp Case No BC059202 Case may be ref'd to Mag Judge Edwards for discov. |
| 8-6-92 | dal | 2. P/S svd Martha A. Evans, Esq., Nicholas E. Chimicles, Esq. Notc of assignment to U.S. Mag Judge on 8-6-92 by mail. dfts |
| 8-12-92 | dal | 3. ANSWER to cmp; J/T demanded. dfts CitiBank (South Dakota), N.A. |
| 8-26-92 | dal | 4. Notc of mot & mot to remand, rtnbl 10-5-92 at 9:30 a.m. plf |
| | | 5. Memo of PA in suppt fo [sic] mot to Remand Class Actn to State Crt. plf |
| | | 6. Decl of Patrick J. Grannan in suppt of mot to Remand Class actn to State Crt. plf |
| 8-13-92 | dal | Placed in File Not Used
Stip & Prop ord extg time to resp to cmp for damages & injunctive relief; Decl of Michael H. Strub, Jr., in suppt thereof. plf |

- 9-21-92 dal
7. Decl of Michael H. Strub, Jr., in suppt of opp of Citibank (South Dakota), N.A., to mot of Barbara Smiley to Remand.
 8. Decl of Michael H. Strub, Jr., in suppt of mot of Citibank (South Dakota), N.A., requesting leave to amd removal petn.
 9. Opp of Citibank (South Dakota), N.A., to mot of Barbara Smiley to Remand.
 10. Appendix of certain authorities cited in opp of Citibank (South Dakota), N.A., to mot of Barbara Smiley to Remand.
 11. Appendix of certain authorities cited in memo of PA of Citibank (South Dakota), N.A. in suppt of mot requesting leave to amd removal petn.
 12. Memo of PA of Citibank (South Dakota), N.A. in suppt of mot requesting leave to amd removal petn.

13. Notc of mot & mot of Citibank (South Dakota) N.A., requesting leave to amd removal petn; [Prop] amd petn for removal, rtnbl 11-2-92 at 9:30 a.m. LODGED Prop Amd notc of removal
- 9-22-92 dal
14. Ex parte applic of dft Citibank (South Dakota), N.A. for an ord shortening notc on mot of dft requesting leave to amd removal petn or, in the alt, to cont hrg date on plf Barbara Smiley's mot to Remand. LODGED Ord
- 9-21-92 dal
15. Amd notc of mot of Citibank (South Dakota), N.A. requesting leave to amd removal petn.
- 9-23-92 dal
16. Decl of Patrick J. Grannan in opp of ex parte applic by dft Citibank for an Ord shortening notc on mot of dft requesting leave to amd removal petn or, in the alt, to cont hrg date on plf's mot to Remand. plfs

- 9-23-92 dal 17. Memo of PA in opp to ex parte applic by Ord shortening Notc on mot of dft requesting leave to amd Removal petn or, the alt, to cont hrg date on plf's mot to Remand. plfs
- 9-24-92 dal 18. Reply of dft to opp of plf to dft's ex parte applic for an ord shortening notc on mot of dft requesting leave to amnd removal petn or, in the alt, to cont hrg on plf's mot to Remand.
- 9-24-92 dal 19. MO: Crt DENIES dft's applic for an Ord shortening time on the hrg re: Citibank's request for leave to amd. But Crt GRANTS dft's request to cont the hrg on plf's mot to Remand frm 10-5-92 to 11-2-92 at 9:30 a.m. Crt finds that the interests of judicial economy will be served by hrg both of these mots of judicial economy will be served by hrg both of these mots together & plf failed, in her opp. to present any strong reasons why this Crt should not grant dft's request to cont the hrg on the mot to Remand. (CR - N/A)

- *9-23-92 dal - Placed in File Not Used [Prop] Ord granting ex parte applic of Citibank (South Dakota), N.A., for an ord shortening notc on dft's mot requesting leave to amd its notc of removal.
- 10-19-92 dal 20. Memo of PA in opp to the mot of Citibank requesting leave to amd the removal petn. plfs
21. Decl of Patrick J. Grannan in opp to mot of dft requesting leave to amd notc of removal. plfs
- 10-26-92 dal 22. Decl of Patrick J. Grannan in suppt of reply memo on mot to Remand. plfs
23. Reply memo of PA in suppt of mot to Remand. plf
24. Suppl Appendix of certain authorities cited in reply memo of PA of Citibank (South Dakota), N.A. in suppt of mot requesting leave to amd removal petn.
25. Reply memo of PA of Citibank (South Dakota), N.A. in suppt of mot requesting leave to amd removal petn.

- | | | |
|-----------|-----|--|
| 10-30-92 | bg | 26. Reqst for oral argumnt re mot reqstng leave to amend removal petition & mot to remand. deft |
| 10-30-92 | bg | 27. Declar of Ricahrd B Kendall in suppt of reqst for oral argmnt re mot reqstng leave to amend removal petition & mot to remand deft |
| *10-29-92 | bg | 28. Suppl submission of stmnt of interest in suppt of mot reqstng leave to amend removal petition. deft |
| 11-9-92 | dal | 29. Resp to dft's suppl subm of stmnt of interest of the Office of Comptroller of The Currency in related case, in suppt of Citibank's mot requesting leave to amd removal petn. plf |
| 11/12/92 | dm | 30. Objectn to plf's response to supplemental submssn of stmnt of int of office of the controller of the currency in related case, in suppt of mot reqst'g lv to amd removal petition. dft |
| *11/9/92 | dm | 31. Declar Patrick J. Grannan in suppt of response to dft's supplemental submssn of stmnt of int of the office of the comp |

- | | | |
|----------|-----|---|
| 11-13-93 | dal | 32. ORD Crt DENIES dft Citibank's mot to and its Notc of Removal & GRANTS plf's request to Reman this actn to Superior Crt of State of CA in & for City & County of L.A. (ENT 1-14-93) (Mld cpy & Notc) (cc: to Superior Crt) MD JS-6 |
| 12-5-93 | bg | 33. Submission of opinion in related cases. deft |
| 12-13-93 | bg | - prop amended notc of removal NOT USED PLC IN FI |
- ENTERED ON ICMS
-

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION: 7 DATE: 01/23/96

CASENO: 2 Civil B078913 -
Los Angeles NO. BC059202
(S.C. Judge:) >
Cross Ref: B077960

SMILEY, BARBARA
Plaintiff-Appellant

vs.

CITIBANK (SOUTH DAKOTA)
Defendant-Respondent

*** SUMMARY DATA ***

CAUSE: Appeal CASE START DATE: 12/13/93

NOTICE OF APPEAL DATE: 09/23/93

AOB: 12/13/93 RB:01/27/94 ARB: 02/17/94

READY DATE: 02/17/94 SUBMISSION DATE:
04/14/94

STATUS: COMPLETED CATEGORY: Civil Complaints -
Other

DISPOSITION: 07/11/94 Affirmed In Full.

OPINION TYPE: Sign Pub >

JUDGES PANEL: ASSIGNED JUSTICE (PT) A C

JUDGES PANEL: LILLIE, MILDRED L. (PJ) P C

JUDGES PANEL: JOHNSON, EARL (J) A D

DOCKET EVENTS

- 1 10/04/93 CNL NOTICE OF APPEAL LODGED/
RECEIVED. 9-23-93, SMILEY, B.
- 2 11/10/93 NNR RCVD NOTICE PER RULE 5.1
NO REPORTERS TRANSCRIPT
10-1-93
- 3 12/13/93 AAO APPELLANT'S APPENDIX AND
OPENING BRIEF FILED.
- 4 12/14/93 LTR FILED LETTER FROM:
REPLACED AOB WITH
CLEARER AOB, FILE DATE
REMAINED THE SAME
- 5 12/15/93 SEX STIPULATION OF EXTENSION
OF TIME FILED TO: FILE RBF
TO 1-28-94 (NO ORDER
NEEDED)
- 6 12/22/93 SCN SETTLEMENT CONFERENCE
NOTICE SENT.
- 7 01/27/94 RBF RESPONDENTS BRIEF FILED.
- 8 01/27/94 APL APPLICATION FILED TO: VISA
TO FILE AC BRIEF IN SUPPORT
OF RESPONDENT (AC BRIEF
SUBMITTED CONCURRENTLY)
- 9 01/27/94 APL APPLICATION FILED TO:
CALIF. BANKERS ASSN TO FILE
AC BRIEF IN SUPPORT OF
RESPONDENT (AC BRIEF
SUBMITTED CONCURRENTLY)
- 10 01/27/94 RDE RECEIVED DOCUMENT
ENTITLED: RESP'S APPENDIX
OF CITED AUTHORITY

- 11 01/27/94 RDE RECEIVED DOCUMENT
ENTITLED: APPENDIX ((RESP)
(EXHIBIT A) DECLARATION RE:
DCA WRIT PROCEEDING
B077960 (?)
- 12 01/27/94 REQ REQUEST FILED TO: CITIBANK
FOR JUD NTC (FOREIGN
AUTHORITY CITED IN BRIEF)
- 13 01/28/94 OFF ORDER FILED. DENYING
PERMISSION TO FILE RESP'S
APPENDIX (EXHIBIT A))
- 14 02/17/94 ARB APPELLANT'S REPLY BRIEF
FILED.
- 15 02/17/94 CFB CASE FULLY BRIEFED.
- 16 03/14/94 CNS CALENDAR NOTICE SENT.
CALENDAR DATE: APRIL 14,
1994 @ 02:00 PM
- 17 04/05/94 LTR FILED LETTER FROM: FR
BURKE DTD 3-30-94 RE:
RECENT AUTHORITY NOT
AVAILABLE AT TIME OF AOB
- 18 04/11/94 RDE RECEIVED DOCUMENT
ENTITLED: BY RESPONDENT
CITIBANK: LEAVE TO FILE
RECENT DECISIONS
(PERMISSION TO FILE)
- 19 04/12/94 RDE RECEIVED DOCUMENT
ENTITLED: BY APPELLANT
DTD 4-12-94, RECENT
DECISIONS FOR ORAL
ARGUMENT (PERMISSION TO
FILE)

- 20 04/14/94 CAS CAUSE ARGUED AND
SUBMITTED.
- 21 04/26/94 LTR FILED LETTER FROM: FR
BURKE DTD 4-25-94 RE:
RECENT DECISIONS IN OTHER
STATES
- 22 05/10/94 FDE FILED DOCUMENT ENTITLED:
BY RESPONDENT CITIBANK
DTD 5-10-94 RE: RECENT
DECISION OF OUT OF STATE
CASE (GREENWOOD)
- 23 06/03/94 LTR FILED LETTER FROM: FR
STRUB DTD 6-2-94 RE: RECENT
AUTHORITY
- 24 07/01/94 RDE RECEIVED DOCUMENT
ENTITLED: ADDITIONAL
AUTHORITY FR GRANNAN
LETTER FORM DTD 7-1-94
(OPINION ATTACHED) (NEED
PERMISSION TO FILE)
- 25 07/11/94 OPF OPINION FILED. AFF/CFP/26/
S*-L/J-DISSENT/COSTS TO
RESPONDENT
- 26 08/5/94 OPM MOD. OF OPINION FILED. (NO
CHANGE IN JUDGMENT)
MODIFYING DISSENT BY
JOHNSON/CFP/8PG
- 27 08/18/94 LTR FILED LETTER FROM:
MORRISON AND FORSTER DTD
8-17-94
- 28 09/08/94 RPR PETITION FOR REVIEW IN
SUPREME COURT RECEIVED.

29 09/08/94 TRN RECORD TRANSMITTED TO
SUPREME COURT.

30 10/13/94 ESC EXT. BY SUPREME CT RE:
PETITION FOR REVIEW FILED:
11-18-94

31 10/27/94 RPG PETITION FOR REVIEW
GRANTED IN SUPREME COURT
LUCAS DID NOT PARTICIPATE

32 10/11/95 RSC REMITTITUR RECEIVED FROM
SUPREME COURT.

33 10/11/95 RMI REMITTITUR ISSUED. WITH
SUPREME CT REMITTITUR,
OPINION, AND DCA OPINI ON
ATTACHED (SUPREME CT
AFFIRMS DCA OPINION

ATTORNEYS & LITIGANTS

CHIMICLES, BURT & JACOBSON
Patrick J. Grannan
633 West Fifth Street
Suite 2200
Los Angeles, CA 90071
(BARBARA SMILEY) PLAINTIFF-APPELLANT

SHEARMAN & STERLING
William M. Burke
725 South Figueroa
21st Floor
Los Angeles, CA 90017
(CITIBANK (SOUTH DAKOTA)) DEFENDANT-
RESPONDENT

CHIMICLES, BURT & JACOBSEN
Nichols E. Chimicles
361 W. Lancaster Avenue
Haverford, PA 19041
(BARBARA SMILEY) PLAINTIFF-APPELLANT

SHEPPARD MULLINS RICHTER & HAMPTON
Charles H. Macnab
333 South Hope
48th Floor
Los Angeles, CA 90071
(CALIFORNIA BANKERS ASSN.)
AMICUS CURIAE

MORRISON & FORRESTER
Robert S. Stern
555 West Fifth Street
Suite 3500
Los Angeles, CA 90013
(VISA) AMICUS CURIAE

4TH DISTRICT COURT OF APPEAL DIV. ONE
Robert O. Staniforth
750 B. Street
Room 500
San Diego, CA 92101

FINANCIAL TRANSACTION

1 RECEIPT NO. R228126 DPTY: ART
FEE TYPE: Filing Fee FILING DATE: 09/23/93
PAY/WAIVE DATE: 10/09/93 CR AMT: 250.00
ATTY SEQ:> 1
PAY TYPE: Check FEE STATUS:> Applicable
CHECK NO.> 1968

END OF DOCKET PRINTOUT FOR CASE B078913

SUPREME COURT OF CALIFORNIA

CASE NUMBER S041711

BARBARA SMILEY,

Appellant

v.

CITIBANK (SOUTH DAKOTA) N.A.,

Respondent

TYPE OF PETITION: REVIEW CAUSE: APPEAL
 CATEGORY: PETITION FOR REVIEW-CIVIL APPEAL
 BRANCH: LA

LOWER COURT INFORMATION

COURT OF APPEAL

DISTRICT: 2 DIVISION: 7 DISPOSITION DATE:
 07/11/94 PUBLISHED: Y DISPOSITION: AFFIRMED
 IN FULL JUSTICE: JOHNSON PROCEEDING:

SUPERIOR COURT

CASE NUMBER BC059202 TYPE NUMBER: SUPER
 CT # JUDGE: GROVER, MELVIN JUDGEMENT
 DATE: COUNTY: LOS ANGELES

ATTORNEY/LITIGANT INFORMATION

PATRICK J. GRANNAN APPELLANT
 CHIMICLES, JACOBSEN & TIKELLIS
 633 WEST 5TH STREET
 SUITE 3300
 LOS ANGELES, CA 90071
 (BARBARA SMILEY)

RICHARD B. KENDALL RESPONDENT
 SHEARMAN AND STERLING
 777 SOUTH FIGUEROA STREET
 THIRTY FOUR FLOOR
 LOS ANGELES, CA 90017
 (CITIBANK (SOUTH DAKOTA) N.A.)

JAMES C. STURDEVANT AMICUS
 STURDEVANT & STURDEVANT
 785 MARKET STREET
 SUITE 500
 SAN FRANCISCO, CA 94103
 (CONSUMER ACTION)

MARK A. CHAVEZ AMICUS
 CHAVEZ & GERTLER
 1475 STEUART ST. TOWER
 ONE MARKET PLAZA
 SAN FRANCISCO, CA 94105
 (TRIAL LAWYERS FOR PUBLIC JSTCE)
 (BANKCARD HOLDERS OF AMERICA)
 (NAT'L ASSN OR CONSUMER ETC)
 (IOWA ET AL. STATES OF HAWAII)

SANFORD SVETCOV AMICUS
 LANDELS, RIPLEY & DIAMOND
 350 STEUART STREET
 SAN FRANCISCO, CA 94105 1250
 (DELAWARE ET AL STS OF ARIZONA)

CHRISTOPHER CHENOWETH AMICUS
 CALIFORNIA BANKERS ASSOCIATION
 201 MISSION STREET
 SUITE 2400
 SAN FRANCISCO, CA 94105
 (CALIFORNIA BANKERS ASSN. ET AL)

JAMES HUIZINGA
MORRISON & FOERSTER
555 WEST FIFTH STREET
SUITE 3500
LOS ANGELES, CA 90013
(MASTERCARD INTERNATIONAL)
(VISA U.S.A.)

AMICUS

L. ROBERT GRIFFIN,
OFFICE OF COMPTROLLER OF THE CURRENCY
250 E. ST. S. W.
INDEPENDENCE SQUARE
WASHINGTON, DC 20219
(OFC OF COMPTROLLER OF CURRENCY)

AMICUS

ALAN S. KAPLINSKY
BALLARD SPAHR ANDREWS & INGERSOLL
BURT M. RUBLIN, ESQ.
1735 MARKET ST, 51ST FLR.
PHILADELPHIA, PA 19103 7579
(GREENWOOD TRUST COMPANY)

AMICUS

KENNEDY P. RICHARDSON
ALBERT LEE, ESQ
1611 TELEGRAPH AVENUE
SUITE 707
OAKLAND, CA 94612
(CYNTHIA ST. JOHN)
(BENJAMIN MILLER)
DENIED W/O PREJ TO RENEWED APP)

AMICUS

PALMER BROWN MADDEN
MCCUTCHEN DOYLE BROWN & ENERSEN
POST OFFICE BOX V.
WALNUT CREEK, CA 94596
(CHASE MANHATTAN BANK N.A.)

AMICUS

ALAN S. KAPLINSKY
BALLARD, SPAHR ANDREWS & INGERSOLL
1735 MARKET STREET
51ST FLOOR
PHILADELPHIA, PA 19103 7579

AMICUS

DOCKET EVENTS

08/22/94 (PRF) PETITION FOR REVIEW FILED
APPELLANT BARBARA SMILEY

09/07/94 (RCV) RECEIVED ADDITIONAL
AUTHORITIES APPELLANT
BARBARA SMILEY

09/13/94 (APR) ANSWER TO PETITION FOR
REVIEW FILED RESPONDENT
CITIBANK (W/EXHB ATTACHED)
(4ON)

09/13/94 (RDE) RECEIVED DOCUMENT ENTITLED:
RESP'S APPLN TO PERMIT
INCLUSION IN APPENDIX

09/13/94 (RDE) RECEIVED DOCUMENT ENTITLED:
RESP'S REQUEST FOR JUDICIAL
NOTICE

09/13/94 (RCV) RECEIVED CA RECORD - ONE
DOGHOUSE (VOL 1 OF 3)

09/22/94 (RCV) RECEIVED C/A RECORD - 2
DOGHOUSES

10/14/94 (EXT) TIME EXTENDED TO GRANT OR
DENY PETITION REVIEW TO
11/18/94

10/27/94 (GRT) PETITION GRANTED APPELLANT;
VOTES: MOS, KEN, BAX, WER, JJ
LUC, CJ DID NOT PARTICIPATE

- 10/28/94 (LTR) FILED LETTER FROM: COUNSEL FOR APPLT.
- 10/31/94 (RTC) RECORD SENT TO COURT B078913:2;3;3 APPNDX; 4; REQ FOR JUDICIAL NOTICE; A/C BRIEFS-2 W/APPLICATIONS; MISC PAPERS. SUPREME CT: 7;8; MISC PAPERS
- 10/31/94 (PEC) PREVIOUS ENTRY CONTINUED B077960: PETN FOR W/MANDATE W/4 VOL EXHIBITS; OPPOSITION; ANSWER; A/C BRIEF W/APPLICATION, A/C OPPOSITION; MISC PAPERS.
- 11/15/94 (REX) APPLICATION FOR EXTENSION OF TIME FILED TO FILE APLNT B. SMILEY'S BR. ON MERITS (OPENING) CURRENTLY DUE NOVEMBER 28, 1994.
- 11/18/94 (EXG) APPLICATION FOR EXTENSION OF TIME GRANTED APPELLANT'S OPENING BRIEF/MERITS TO 12/16/94
- 12/16/94 (BMF) BRIEF ON THE MERITS FILED APLNT. SMILEY'S OPENING + VOL'S., I, II & III OF NON-CALIF. AUTHORITIES
- 12/16/94 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF TRIAL LAWYERS FOR PUBLIC JUSTICE ET AL. IN SUPPORT OF APPELLANTS (W/ BRIEF)

- 12/16/94 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF CONSUMER ACTION IN SUPPORT OF APPLT (W/BRIEF)
- 12/19/94 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF STATE OF HAWAII, IOWA, MASSACUSETTS ET AL. IN SUPPORT OF APPLT SMILEY (SAME ATTY REPRESENTS A/C TRIAL LAWYERS FOR PUBLIC JUSTICE ET AL)
- 12/20/94 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF CONSUMER ACTION IN SUPPORT OF APPELLANT, ANS DUE: 1/9/95
- 12/20/94 (ACB) AMICUS CURIAE BRIEF FILED BY: CONSUMER ACTION IN SUPPORT OF APPELLANT, ANS DUE: 1/9/95
- 12/20/94 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF STATES OF HAWAII, MARYLAND ET AL. IN SUPPORT OF APPLT. ANS DUE: 1/9/95
- 12/20/94 (ACB) AMICUS CURIAE BRIEF FILED BY: STATES OF HAWAII, MARYLAND ET AL. IN SUPPORT OF APPELLANT. ANS DUE: 1/9/95
- 12/20/94 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF TRIAL LAWYERS FOR PUBLIC JUSTICE ET AL. IN SUPPORT OF APPELLANT. ANS DUE: 1/9/95
- 12/20/94 (ACB) AMICUS CURIAE BRIEF FILED BY: TRIAL LAWYERS FOR PUBLIC JUSTICE ET AL. IN SUPPORT OF APPLT. ANS DUE: 1/9/95.

- 01/09/95 (RAC) RESPONSE TO AMICUS CURIAE BRIEF FILED BY: RESPONDENT, CITIBANK (SOUTH DAKOTA) ALL AC BRIEFS IN SUPPORT OF APPELLANT SMILEY
- 01/17/95 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF FROM MASTERCARD INTERNATIONAL & VISA U.S.A. IN SUPPORT OF RESP CITIBANK (AC & 1 VOLUME OF EXHIBITS UNDER SEPARATE COVER). *OK ANS DUE 2-9-95*
- 01/17/95 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF FROM CALIFORNIA BANKERS ASSN ET AL IN SUPPORT OF RESP CITIBANK. (AC UNDER SEPARATE COVER). * OK ORDER BEING PREPARED* ANS: 2-9-95
- 01/17/95 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF STATES OF ARIZONA, DELAWARE, LOUISIANA ET AL. IN SUPPORT OF RESP CITIBANK (BRIEF & APPL BOUND TOGETHER)
- 01/17/95 (MOF) MOTION FILED APPEAR PRO HAC VICE BY WOLF, BLOCK ET AL ON BEHALF OF AMICUS GREENWOOD TRUST COMPANY, PHILADELPHIA, PA (AMICUS BRIEF ATTACHED). RCVD AMENDED P/S STATE BAR

- 01/17/95 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF AND BRIEF OF GREENWOOD TRUST COMPANY IN SUPPORT OF RESP CITIBANK
- 01/18/95 (ACA) RECEIVED APPLICATION TO FILE AC BRIEF FROM COMPTROLLER OF THE CURRENCY IN SUPPORT OF RESP CITIBANK
- 01/19/95 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF STATES OF ARIZONA, DELAWARE, LOUISIANA ET AL IN SUPPORT OF RESPONDENT. ANS DUE: 2/9/95
- 01/19/95 (ACB) AMICUS CURIAE BRIEF FILED BY: STATES OF ARIZONA, DELAWARE ET AL. IN SUPPORT OF RESPONDENT. ANS DUE: 2/9/95
- 01/17/95 (FIL) FILED RESPONDENT'S APPENDIX OF CERTAIN CITED AUTHORITIES VOLS I THRU IV [SEE DOCKET #41 FOR NEXT SEQUENTIAL DOCKET ENTRY]
- 01/23/95 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF CALIFORNIA BANKERS ASSN ETC ET AL. IN SUPPORT OF RESP CITIBANK. ANS DUE 2/9/95
- 01/23/95 (ACB) AMICUS CURIAE BRIEF FILED BY: CALIFORNIA BANKERS ASSN ETC ET AL IN SUPPORT OF RESP CITIBANK. ANS DUE: 2/9/95.

- 01/23/95 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF MASTERCARD INT'L & VISA USA IN SUPPORT OF RESP. ANS DUE: 2/9/95
- 01/23/95 (ACB) AMICUS CURIAE BRIEF FILED BY: MASTERCARD INT'L & VISA USA IN SUPPORT OF RESP CITIBANK W/1 VOL EXHIBITS (ANS DUE: 2/9/95)
- 01/25/95 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF OFFICE OF THE COMPTROLLER OF THE CURRENCY IN SUPPORT OF RESPONDENT. BRIEF DUE: 1/31/95. ANS DUE: 2/21/95
- 01/26/95 (RCV) RECEIVED 3 ADD'L DOGHOUSES IN B0778913 FROM CA 2 - ROUTED TO COURT
- 01/17/95 (RQJ) REQUEST FILED TO TAKE JUDICIAL NOTICE RESPONDENT CITIBANK
[***OUT OF SEQUENCE***]
- 01/30/95 (OPO) OPPOSITION FILED BY: APLNT. BARBARA SMILEY/ OPPOSING RESPS'. MOTION REQUESTING JUDICIAL NOTICE OF CITED AUTHORITIES.
- 01/31/95 (RCV) RECEIVED AMENDED PROOF/ SERVICE ON STATE BAR BY WOLF, BLOCK ET AL & MCCUTCEN DOYLE (PRO HAC VICE AMICUS GREENWOOD TRUST COMPANY)

- 01/17/95 (AMF) ANSWER BRIEF ON THE MERITS FILED RESP CITIBANK (NOT DOCKETED AT TIME OF FILING)
- 01/31/95 (ACB) AMICUS CURIAE BRIEF FILED BY: OFFICE OF COMPTROLLER OF THE CURRENCY (ANS DUE: 2-21-95)
- 02/03/95 (FIL) FILED RESPONSE TO OPPOSITION TO MOTION REQUESTING JUDICIAL NOTICE. FILED BY: RESP. CITIBANK
- 02/06/95 (RMF) REPLY BRIEF ON THE MERITS FILED APPELLANT, BARBARA SMILEY AND 1 VOLUME OF APPENDIX OF NON-CALIFORNIA AUTHORITY SUPPORTING APPELLANT'S REPLY BRIEF
- 02/07/95 (RCV) RECEIVED NOTICE OF CHANGE OF FIRM NAME & ADDRESS OF ATY FOR PROPOSED AMICUS GREENWOOD TRUST COMPANY & PARTIAL WITHDRAWAL OF MOTN PRO HAC VICE JEFFREY SALTZ.
- 02/07/95 (ORF) ORDER FILED: ADMISSION PRO HAC VICE ALAN S. KAPLINSKY AND BURT M. RUBLIN, STATE OF PENNSYLVANIA, ON BEHALF OF AMICUS GREENWOOD TRUST COMPANY IS GRANTED.
- 02/08/95 (AOG) FILED ORDER GRANTING PRMSSN TO FILE AC BRF ALAN S. KAPLINSKY AND BURT M. RUBLIN OF THE STATE OF PENNSYLVANIA [GREENWOOD TRUST COMPANY]

02/08/95 (ACB) AMICUS CURIAE BRIEF FILED BY:
ALAN S. KAPLINSKY AND BURT
M. RUBLIN OF THE STATE OF
PENNSYLVANIA [GREENWOOD
TRUST COMPANY] IN SUPPORT
OF RESPONDENT

02/21/95 (ACB) AMICUS CURIAE BRIEF FILED BY:
OFFICE OF COMPTROLLER OF
THE CURRENCY IN SUPPORT OF
RESP. CITIBANK

02/23/95 (LTR) FILED LETTER FROM: RESP.
CITIBANK (SO. DAKOTA)) N.A.,
NOTIFYING THE CRT. OF A
RECENT LETTER FROM JULIE L.
WILLIAMS, CHIEF-COUNSEL, OFC.
OF COMPTROLLER OF THE
CURRENCY.

03/07/95 (LTR) FILED LETTER FROM: APPELLANT,
SMILEY OPPOSING LETTER FROM
RESPONDENT CITIBANK (SOUTH
DAKOTA)

03/15/95 (FIL) FILED BY RESP/CITIBANK, LTR/
BRF OPPOSING LTR/BRF FILED BY
APLNT/SMILEY

03/15/95 (FIL) FILED LTR. ADVISING CRT. OF
PROPOSED REVISIONS BY THE
OFC. OF THE COMPTROLLER OF
THE CURRENCY. FILED BY RESP/
CITIBANK

04/13/95 (ORF) ORDER FILED: APPLICATION OF
CYNTHIA ST. JOHN & BENJAMIN
MILLER TO FILE ACB IS DENIED
W/O PREJUDICE TO A RENEWED
APPLICATION SHOWING THE
ABSENCE OF UNDUE DELAY.<<<

04/17/95 (RCV) RECEIVED RENEWED
APPLICATION TO FILE A/C BRIEF
FROM CYNTHIA ST. JOHN ET AL.

04/18/95 (AOG) FILED ORDER GRANTING PRMSSN
TO FILE AC BRF RE-APPLICATION
OF CYNTHIA ST. JOHN AND
BENJAMIN MILLER IN SUPPORT
OF APPLNT. ANSWER DUE:
4/28/95

04/28/95 (FIL) FILED BY RESP. CITIBANK (S.D.),
N.A.; ANSWER TO ACB OF
CYNTHIA ST. JOHN & BENJAMIN
MILLER.

05/01/95 (ACA) RECEIVED APPLICATION TO FILE
AC BRIEF CHASE MANHATTAN
BANK, N.A. IN SUPPORT OF RESP
(APPLICATION ONLY)

05/02/95 (LTR) FILED LETTER FROM: APLT
SMILEY DATED 5-2-95 RE;
ADDITIONAL AUTHORITIES.

05/03/95 (AOG) FILED ORDER GRANTING PRMSSN
TO FILE AC BRF CHASE
MANHATTAN BANK, N.A. IN
SUPPORT OF RESP BRIEF DUE:
5/8/95 ANSWER DUE: 5/15/95

05/03/95 (CHA) CHANGE OF ADDRESS FILED
FOR: BY: RESP. CITIBANK (SOUTH
DAKOTA), N.A.

05/04/95 (COC) CASE ORDERED ON CALENDAR:
6-6-95, 9AM, L.A.

05/09/95 (ACB) AMICUS CURIAE BRIEF FILED BY:
BY COUNSEL FOR CHASE
MANHATTAN BANK (IN SUPPORT
OF RESP., CITIBANK) PERM
GRANTED.

05/09/95 (RJN) REQUEST FOR JUDICIAL NOTICE
FILED BY COUNSEL FOR A/C
CHASE MANHATTAN BANK.

05/15/95 (NOT) NOTE: MAIL RE-SENT TO AMICUS
ATTY MADDEN (MCCUTCHEN,
DOYLE, ETC.)

05/15/95 (LTR) FILED LETTER FROM: APLNT.
SMILEY [-ADVISING COURT
APLNT. WILL NOT BE FILING AN
ANSWER TO BRF. OF AMICUS
CURIAE - MANHATTAN CHASE
BANK, N.A.-]

05/18/95 (LTR) FILED LETTER FROM: APLNT.
SMILEY APPRISING THE COURT
OF ADD'L. AUTHORITIES.

05/23/95 (RES) RESPONSE FILED BY RESP> CITY
BANK (SO. DAKOTA) TO LETTER
OF APLNT. OF ADD'L
AUTHORITIES.

05/30/95 (LTR) FILED LETTER FROM: RESP
CITING ADDITIONAL
AUTHORITIES

06/06/95 (CCA) CAUSE CALLED AND ARGUED

06/06/95 (SUB) SUBMITTED

09/01/95 (OPF) OPINION FILED AFFIRMED.
OPINION BY: MOSK, ACTING C.J.
JOINED BY: KEN, BAX, WER,
ARDAIZ, (ASSIGNED) JJ DISSENT;
ARABIAN, J. DISSENT: GEORGE, J.

10/03/95 (RMI) REMITTITUR ISSUED WITH
CERTIFIED COPIES SENT TO CA/2

10/13/95 (RCV) RECEIVED RECEIPT FOR
REMITTITUR FROM CA/2

12/08/95 (RDE) RECEIVED DOCUMENT ENTITLED:
NOTICE OF FILING OF PETITION
FOR WRIT OF CERTIORARI IN
UNITED STATES SUPREME COURT.

01/26/96 (RLF) RECEIVED LETTER FROM: USSC
DATED 1-19-96: CERT GRANTED.
BRIEFS DUE MARCH 1 AND
MARCH 29.

****CASE NOTES****

****PUBLISHED AT 11 CAL 4TH 138****

END OF DOCKET INFORMATION FOR CASE
NUMBER S041711

William M. Burke (State Bar No. 040121)
 Richard B. Kendall (State Bar No. 090072)
 Michael H. Strub, Jr. (State Bar No. 153828)
 SHEARMAN & STERLING
 725 S. Figueroa St., 21st Floor
 Los Angeles, California 90017
 Telephone: (213) 239-0300

Attorneys for Defendants
 CITIBANK (SOUTH DAKOTA), N.A.

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

BARBARA SMILEY, On)	Case No. BC059202
Behalf of Herself and All)	
Others Similarly Situated,)	ANSWER AND
Plaintiff,)	AFFIRMATIVE DEFENSES
vs.)	OF DEFENDANT
CITIBANK (SOUTH)	CITIBANK (SOUTH
DAKOTA), N.A.,)	DAKOTA), N.A. TO
Defendants.)	COMPLAINT FOR
)	DAMAGES AND
)	INJUNCTIVE RELIEF
)	<u>JURY TRIAL DEMANDED</u>
)	

Defendant Citibank (South Dakota) N.A. ("Citibank"), for itself and no others, for its answer to the Complaint for Damages and Injunctive Relief (the "Complaint"), admits, denies, and alleges as follows:

INTRODUCTION

1. Answering paragraph 1, Citibank admits that plaintiff Barbara Smiley ("Plaintiff" or "Smiley") purports

to bring this case on her own behalf and on behalf of certain other persons described therein, but Citibank denies that a class action is appropriate. Citibank is unable to comprehend the second sentence of paragraph 1, which avers that "Citibank has charged the plaintiff and other similarly situated persons (South Dakota), N.A. the late charges that are the subject of this action," but Citibank alleges that Citibank (South Dakota) N.A. has charged Plaintiff late payment charges on her credit card accounts in accordance with the terms of her written card agreements. Except as so admitted and alleged, Citibank denies each and every allegation of paragraph 1.

2. Answering paragraph 2, Citibank admits that it issues credit cards. Citibank alleges that late payments by customers require additional processing and thereby result in an increase in processing costs. Citibank alleges that Citibank intends to continue to contract for and collect late payment charges and that it has not issued a warning in California regarding the purported illegality of such charges because such charges do not violate any applicable law. Except as so admitted and alleged, Citibank denies each and every allegation of paragraph 2.

3. Answering paragraph 3, Citibank denies each and every allegation contained therein.

4. Answering paragraph 4, Citibank admits that the Complaint seeks certain relief described therein. Citibank alleges that it charges late payment charges on its credit card accounts in accordance with the terms of its card agreements. Citibank alleges that it has not issued a warning in California regarding the purported illegality of such charges because such charges do not violate any

applicable law. Except as so admitted and alleged, Citibank denies each and every allegation of paragraph 4.

PARTIES

5. Answering paragraph 5, Citibank alleges that it has charged Plaintiff late payment charges on her Mastercard and Preferred Visa credit card accounts in accordance with the terms of the card agreements. With respect to the remaining allegations in paragraph 5, Citibank lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis denies each and every such allegation.

6. Answering paragraph 6, Citibank alleges that it is a national banking association chartered and located in South Dakota with its principal place of business in South Dakota. Citibank denies that any entity exists known as "Citicorp, Inc.," but Citibank alleges that there is an entity known as "Citicorp," that Citibank is a wholly owned subsidiary of Citicorp, and that Citicorp is a Delaware corporation with its principal place of business in New York, New York. Citibank alleges that it issues Citibank credit cards to California residents, as well as those of certain other States. Except as so alleged, Citibank denies each and every allegation of paragraph 6.

7. Answering paragraph 7, Citibank denies each and every allegation contained therein.

JURISDICTION AND VENUE

8. Answering paragraph 8, Citibank alleges that complete diversity of citizenship exists between each

Plaintiff and each defendant in this action and, therefore, that this Court has original jurisdiction over this action. Citibank alleges that the Superior Court of the State of California for the County of Los Angeles (the "Superior Court") has concurrent jurisdiction over this action. Except as so alleged, Citibank denies each and every allegation of paragraph 8.

9. Answering paragraph 9, Citibank alleges that it issues credit cards. Citibank alleges that the courts of the State of California, including this Court, have personal jurisdiction over Citibank. Except as so alleged, Citibank denies each and every allegation of paragraph 9.

10. Answering paragraph 10, Citibank alleges that the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs. Citibank alleges that venue is proper in this Court. Citibank admits that the matter in controversy exceeds the jurisdictional minimum of the Superior Court. Citibank alleges that Plaintiff and certain California residents who reside in Los Angeles County have paid late payment charges on their credit card accounts in accordance with the terms of their written card agreements. Except as so admitted and alleged, Citibank denies each and every allegation of paragraph 10.

CLASS ACTION ALLEGATIONS

11. Answering paragraph 11, Citibank admits that Plaintiff purports to bring this case on her own behalf and on behalf of certain other persons described therein, but Citibank denies that a class action is appropriate.

Except as so admitted, Citibank denies each and every allegation of paragraph 11.

12. Answering paragraph 12, Citibank alleges that it issues credit cards to California residents. Citibank alleges that it has received late payment charges from customers in California in accordance with the terms of their written card agreements. Except as so alleged, Citibank denies each and every allegation of paragraph 12.

13. Answering paragraph 13 including without limitation all subparts thereof, Citibank denies each and every allegation of paragraph 13.

14. Answering paragraph 14, Citibank admits that Plaintiff has retained counsel who are competent and experienced in class action litigation. Except as so admitted, Citibank denies each and every allegation of paragraph 14.

15. Answering paragraph 15, Citibank alleges that it receives late payment charges from customers in accordance with the terms of their written card agreements. Except as so alleged, Citibank denies each and every allegation of paragraph 15.

16. Answering paragraph 16, Citibank denies each and every allegation of paragraph 16.

17. Answering paragraph 17, Citibank alleges that as of the date hereof it charges to certain accounts of certain of its customers in California, pursuant to such customers' card agreements, a late payment fee of up to \$15 for each billing period in which such customers' minimum payment is not received within 25 days after such customers' payment due date. Citibank alleges that

as of the date hereof it charges to certain preferred accounts of certain of its customers in California, pursuant to such customers' preferred card agreements, a late payment fee of up to \$6 for each billing period in which such customers' minimum payment is not received within 15 days after such customers' payment due date; if such payment is not received as of such customers' next payment due date, such preferred accounts are charged an additional fee equal to the greater of \$15 or .65 percent of such customers' account balance. Except as so alleged, Citibank denies each and every allegation of paragraph 17.

18. Answering paragraph 18, Citibank denies each and every allegation of paragraph 18.

19. Answering paragraph 19, Citibank denies each and every allegation of paragraph 19.

20. Answering paragraph 20, Citibank denies each and every allegation of paragraph 20.

21. Answering paragraph 21, Citibank denies each and every allegation of paragraph 21.

22. Answering paragraph 22, Citibank denies each and every allegation of paragraph 22.

23. Answering paragraph 23, Citibank alleges that Citibank intends to continue to contract for and collect late payment charges. Except as so alleged, Citibank denies each and every allegation of paragraph 23.

FIRST CAUSE OF ACTION

(Unlawful Business Practices in violation of California Business and Professions Code § 17200 *et seq.*)

24. Answering paragraph 24, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 23 herein.

25. Answering paragraph 25, Citibank respectfully refers the Court to section 17200 of the California Business and Professions Code for the precise language of that statute. Citibank otherwise denies each and every allegation of paragraph 25.

26. Answering paragraph 26, Citibank denies each and every allegation of paragraph 26.

27. Answering paragraph 27, Citibank denies each and every allegation of paragraph 27.

28. Answering paragraph 28, Citibank denies each and every allegation of paragraph 28.

29. Answering paragraph 29, Citibank admits that Plaintiff seeks the relief described therein. Except as so admitted, Citibank denies each and every allegation of paragraph 29.

30. Answering paragraph 30, Citibank denies each and every allegation of paragraph 30.

SECOND CAUSE OF ACTION

(Breach of Duty of Good Faith and Fair Dealing)

31. Answering paragraph 31, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 30 herein.

32. Answering paragraph 32, Citibank denies each and every allegation of paragraph 32.

33. Answering paragraph 33, Citibank denies each and every allegation of paragraph 33.

34. Answering paragraph 34, Citibank is not required to deny allegations as to damages, *see* Fed. R. Civ. P. 8(d), but Citibank denies that Plaintiff has suffered any actionable injury or damages related in any way to the claims set forth in the Complaint.

THIRD CAUSE OF ACTION

(Violation of Civil Code § 1671)

35. Answering paragraph 35, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 34 herein.

36. Answering paragraph 36, Citibank denies each and every allegation of paragraph 36.

37. Answering paragraph 37, Citibank denies each and every allegation of paragraph 37.

FOURTH CAUSE OF ACTION

(Unjust Enrichment and
Imposition of Constructive Trust)

38. Answering paragraph 38, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 37 herein.

39. Answering paragraph 39, Citibank denies each and every allegation of paragraph 39.

40. Answering paragraph 40, Citibank denies each and every allegation of paragraph 40.

FIFTH CAUSE OF ACTION

(Fraud and Deceit)

41. Answering paragraph 41, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 40 herein.

42. Answering paragraph 42, Citibank denies each and every allegation of paragraph 42.

43. Answering paragraph 43, Citibank denies each and every allegation of paragraph 43.

44. Answering paragraph 44, Citibank denies each and every allegation of paragraph 44.

45. Answering paragraph 45, Citibank is not required to deny allegations as to damages, *see* Fed. R. Civ. P. 8(d), but Citibank denies that Plaintiff has suffered any actionable injury or damages related in any way to the claims set forth in the Complaint.

46. Answering paragraph 46, Citibank denies each and every allegation of paragraph 46.

47. Answering paragraph 47, Citibank denies each and every allegation of paragraph 47.

SIXTH CAUSE OF ACTION

(Negligent Misrepresentation)

48. Answering paragraph 48, Citibank refers to, realleges, and incorporates herein by reference each and every response set forth in paragraphs 1 through 47 herein.

49. Answering paragraph 49, Citibank denies each and every allegation of paragraph 49.

50. Answering the third sentence of paragraph 50, Citibank is not required to deny allegations as to damages, *see* Fed. R. Civ. P. 8(d), but Citibank denies that Plaintiff has suffered any actionable injury or damages related in any way to the claims set forth in the Complaint. With respect to the remaining allegations in paragraph 50, Citibank lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis denies each and every allegation contained therein.

SEVENTH CAUSE OF ACTION

(Breach of Contract and Rescission)

51. Answering paragraph 51, Citibank refers to, realleges, and incorporates herein by reference each and

every response set forth in paragraphs 1 through 50 herein.

52. Answering paragraph 52, Citibank alleges that Plaintiff entered into written card agreements with Citibank and that any late payment charges to Plaintiff's accounts were legal and permissible under all applicable laws. Except as so alleged, Citibank denies each and every allegation of paragraph 52.

53. Answering paragraph 53, Citibank denies each and every allegation of paragraph 53.

54. Answering paragraph 54, Citibank is not required to deny allegations as to damages, *see* Fed. R. Civ. P. 8(d), but Citibank denies that Plaintiff has suffered any actionable injury or damages related in any way to the claims set forth in the Complaint.

AFFIRMATIVE DEFENSES

55. By alleging the matters set forth in paragraphs 56 through 70 below under the heading "Affirmative Defenses," Citibank does not thereby allege, admit, concede, or imply that Citibank has the burden of proof with respect to all or any part of any such matters.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

56. The Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Citibank.

SECOND AFFIRMATIVE DEFENSE

(Federal preemption of State Law)

(All Causes of Action)

57. Plaintiff is barred from obtaining any relief as pleaded in the Complaint, because the California law on which Plaintiff's claims are based is preempted by the federal banking laws including without limitation the National Bank Act and regulations promulgated thereunder and by the Supremacy Clause of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

(All Causes of Action)

58. Plaintiff is barred by an accord and satisfaction from obtaining any relief as pleaded in the Complaint, because Citibank has fully performed any and all duties and obligations required to be performed by it and has satisfied any and all conditions required to be satisfied by it pursuant to the terms of any agreement with plaintiff, except such duties, obligations, and conditions the performance or satisfaction of which was prevented or excused by the acts or omissions of Plaintiff or parties other than Citibank.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

(All Causes of Action)

59. Plaintiff is estopped by her conduct from claiming that Citibank is in any way at fault as alleged in the Complaint, because, by way of example only and not limitation, Plaintiff at all relevant times was aware of and acquiesced in the alleged facts and events of which she now complains.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

(First, Third, and Fourth Causes of Action)

60. Plaintiff is barred by laches from obtaining any relief on any actions in equity pleaded in the Complaint, because Plaintiff has unjustifiably delayed in bringing her Complaint and Citibank has been prejudiced thereby.

SIXTH AFFIRMATIVE DEFENSE

(Limitation of Actions)

(All Causes of Action)

61. Plaintiff is barred by the applicable statutes of limitation, as set forth in sections 336 *et seq.* of the California Code of Civil Procedure from obtaining any relief as Pleaded in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

(All Causes of Action)

62. If there has been any event entitling Plaintiff to relief against Citibank as pleaded in the Complaint, which Citibank denies, Plaintiff has, by reason of her conduct, waived any claims against Citibank that she might otherwise have. By way of example only and not limitation, Plaintiff failed to notify Citibank of any alleged wrongdoing by Citibank within a reasonable time after she discovered or should have discovered such alleged wrongdoing.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

(All Causes of Action)

63. Plaintiff is barred from obtaining any relief as pleaded in the Complaint by the doctrine of unclean hands, because of, by way of example only and not limitation, Plaintiff's conduct as alleged in paragraphs 59 and 62 herein and otherwise.

NINTH AFFIRMATIVE DEFENSE

(Lack of Proximate Cause)

(All Causes of Action)

64. Any and all actions or failures to act by Citibank were not the proximate cause of any injury or damages suffered or to be suffered by Plaintiff. Such injury or damages, if any, were proximately caused by actions or

failures to act by Plaintiff or by actions or failures to act by parties other than Citibank.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

(All Causes of Action)

65. Plaintiff is barred from obtaining any relief as pleaded in the Complaint because of Plaintiff's failure to take reasonable, necessary, appropriate, and feasible steps to mitigate her damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

(No Entitlement to Punitive Damages)

(Fifth Cause of Action)

66. Any alleged conduct of Citibank does not satisfy the standard for recovery by Plaintiff of punitive damages set forth in California Civil Code section 3294.

TWELFTH AFFIRMATIVE DEFENSE

(Illegality of Punitive and Treble Damages Award)

(First and Fifth Causes of Action)

67. All or part of any award of punitive damages or treble damages against Citibank would violate Citibank's rights under the federal banking laws and under the United States Constitution and the California Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

(All Causes of Action)

68. If any injury or damage occurred as alleged in the Complaint, such injury or damage was caused or contributed to, in whole or in part, by the actions, omissions, or fault of Plaintiff or parties other than Citibank.

FOURTEENTH AFFIRMATIVE DEFENSE

(Plaintiff's Default)

(Seventh Cause of Action)

69. Plaintiff is barred from obtaining any relief on her cause of action for breach of contract and rescission, because Plaintiff has defaulted on her contractual obligations to Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorney's Fees)

(All Causes of Action)

70. Any recovery by Plaintiff by way of the Complaint does not satisfy the standard for recovery by Plaintiff of attorney fees set forth in section 1021.5 of the California Code of Civil Procedure.

SIXTEENTH AFFIRMATIVE DEFENSE

(Set-Off)

(All Causes of Action)

71. To the extent Plaintiff is found to have been damaged by any action or inaction of Defendant, Defendant is entitled to off-set such damages by any amounts owed to Defendant by Plaintiff.

WHEREFORE, Citibank prays that:

1. Plaintiff takes nothing by her Complaint;
2. Citibank recovers its costs of suit and reasonable expenses incurred herein, including without limitation attorneys' fees; and
3. Citibank recovers such other and further relief as this Court deems just and proper.

Dated: August 12, 1992 SHEARMAN & STERLING
 William M. Burke
 Richard B. Kendall
 Michael H. Strub, Jr.

By /s/ Richard B. Kendall
 Richard B. Kendall

Attorneys for Defendant
 CITIBANK (SOUTH
 DAKOTA), N.A.

[Certificates Of Service Omitted In Printing]

Exhibits to Declaration of Michael H. Strub, Jr. in Support of Opposition of Citibank (South Dakota), N.A. to Motion of Barbara Smiley to Remand, filed in U.S. District Court for the Central District of California, Sept. 21, 1992, after removal but before remand to state court

CITIBANK CLASSIC CARD AGREEMENT

This is your Citibank Classic Card Agreement. Please read it and keep it for your records. You do not have to sign the Agreement. In the Agreement, the word *card* means either one or more cards; the words, *you*, *your* and *yours* mean the cardmember as well as anyone the cardmember permits to use the card; the words *we*, *us* and *our* mean Citibank (South Dakota), N.A. The words *Citibank Classic checks* mean one or more checks that we may send to you to access your Citibank Classic account.

Credit Line:

Your initial credit line will appear on the folder containing your card. A portion of your credit line will be available for cash advances. At our discretion we may change your credit line or cash advance limit at any time. We will notify you if we do, either by mail or through your monthly billing statement. You may request a change to your credit line or cash advance limit by contacting Citibank Customer Service by phone or mail.

Card Uses/Credit Line:

You must sign the card in order to use it. Your initial credit line will appear on the folder containing your card. This full amount is available to buy or lease goods or services wherever the card is honored. A portion of your

credit line will also be available for cash advances (cash loans) at any bank or automated teller machine that accepts the card or by using Citibank Classic checks. The total amount charged on your account, including purchases, cash advances, finance charges, fees, or other charges, must always remain below your credit line.

Additional Cards:

You may request additional cards on your account for yourself or others by contacting Citibank Customer Service. You are responsible for the use of each card according to the terms of this Agreement.

Annual Membership Fee:

You will pay us a non-refundable annual membership fee of \$20. This fee will be added to your purchase balance on your first monthly billing statement and annually thereafter.

Billing:

We will send you a monthly billing statement when there is activity on your account. Your monthly statement will show your new balance, any finance charges, the minimum amount due, and the payment due date. In addition, it will show your current credit line and cash advance limit, an itemized list of current charges, Citibank Classic check transactions, payments and credits, a summary showing separately your purchase account, your cash advance account and finance charges on each,

as well as other information concerning your account. You must notify us of a change in your address.

New Balance:

To determine your New Balance, we begin with the outstanding balance on your account at the beginning of each billing period – called the "Previous Balance" on your billing statement. We then add any purchases and cash advances that are recorded on your account and subtract any payments and credits received. We then add any other adjustments (for example, corrections of a prior calculation) and finally add the appropriate finance charges and fees.

Finance Charges on Purchases:

We will add a finance charge if you do not pay the New Balance listed on your last monthly statement in full on or before its payment due date. When you do not pay your New Balance in full (that is, if you choose to revolve), we will assess finance charges on purchases as follows:

- We start with the purchase balance at the beginning of your monthly billing period and will add to that any unpaid finance charges. This is called the "Previous Balance" on your statement. Your monthly billing period begins the day of your statement date and varies with the number of days in that billing month.
- On each day of the billing period we subtract payments, we add new purchases, and we make adjustments (e.g. for credited returns, prior statement errors, and the

like). This determines a daily balance. Unless we elect to use a later date, we add purchases to the balance as of the date of the purchase.

■ We total the daily balances, and then divide that figure by the number of days in the billing period. This determines the average daily balance, which is the "balance subject to finance charge."

■ We multiply the "balance subject to finance charge" by 1.65%, the monthly periodic rate, which corresponds to a 19.8% **annual percentage rate**. This amount is your **finance charge** on purchases.

Finance Charges On Cash Advances:

We will add a finance charge for your cash advances from the day you take the cash advance until the day we receive payment in full. We determine the amount of the finance charge as follows

■ We start with the cash advance balance at the beginning of your monthly billing period and will add to that any unpaid cash advance finance charges. This is called the "Previous Balance" on your statement.

■ On each day of the billing period we subtract payments, we credit adjustments, and we add new cash advances, other adjustments, and unpaid finance charges. This determines a daily balance. Unless we elect to use a later date, we add cash advances to the balance as of the day they are taken.

■ We total the daily balances, and then divide that figure by the number of days in the billing period. This determines the "balance subject to finance charge"

■ We multiply the "balance subject to finance charge" by 0.05424%, the daily periodic rate, which corresponds to a 19.8% **annual percentage rate**. We then multiply the resulting amount by the number of days in the billing period. This amount is your **finance charge** on cash advances.

Finance Charges – Cash Advance Transaction Fee:

We will also add an additional **finance charge** for each cash advance transaction if you obtain the cash advance at an Automated Teller Machine (ATM), this additional **finance charge** will be \$1.75. If you obtain the cash advance via a Citibank Classic check, or at a bank or other finance institution (without using an ATM), this additional **finance charge** will equal 2% of the amount of each cash advance; however, it will not be less than \$2.00 or more than \$10.00. The cash advance transaction fee will cause the Annual Percentage Rate on your billing statement on which the transaction first appears to exceed the rate stated above.

Minimum Finance Charge:

If your finance charge for purchases or cash advances is less than 50¢, we will impose in each case a minimum **finance charge** of 50¢. We will charge the amount at our discretion to either your purchase or cash advance balance.

Charges Made in Foreign Currencies:

FOR VISA ACCOUNTS: If you incur a charge in a foreign currency, the charge will be converted by Visa International into a U.S. dollar amount. Visa International will use the procedures set forth in its Operating Regulations in effect at the time that the transaction is processed. Currently, those Regulations provide that the currency conversion rate to be used is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case; Visa retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

FOR MASTERCARD ACCOUNTS: If you incur a charge in a foreign currency, the charge will be converted by MasterCard International, Inc., into a U.S. dollar amount. MasterCard International will use the conversion procedures published from time-to-time to its members at the time that the transaction is processed. Currently, the currency conversion rate used to determine the transaction amount in U.S. dollars is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case; MasterCard retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

Minimum Amount Due:

The minimum payment will be the total of the following:

- Your New Balance if it is less than \$20, or \$20 if your New Balance is between \$20 and \$720 (however, if your billed finance charges exceed \$20, your minimum payment will be the amount of your billed finance charges), or, if it is more than \$720, $\frac{1}{36}$ th of your New Balance, rounded to the next dollar;
- Any amount past due; and
- Any amount in excess of your credit line.

You must pay at least the minimum payment each month, but you may pay more than that amount at any time without a penalty. The sooner you pay your New Balance, the less you will have to pay in finance charges.

Payments:

We can accept late or partial payments as well as payments that are marked "paid in full" or other restrictive endorsements, without losing any of our rights under this Agreement. If you pay more than the minimum amount due, we will allocate the excess amount to your purchase or cash advance balance at our discretion, unless you tell us otherwise. You must pay us in U.S. dollars drawn on funds on deposit in the United States. However, we reserve the right to accept payments made in Canadian currency. If we do, we will charge you a currency conversion fee based upon the "spot" rates existing at the time of conversion. Please do not send us cash payments.

Exceeding Your Credit Line:

We will charge your account an over the credit line fee of \$10 for each billing period in which your New Balance exceeds your credit line. This fee will be added to your purchase balance.

Late Payments:

We will charge your account a late payment fee of \$15 for each billing period in which your minimum payment is not received within 25 days after your payment due date. This fee will be added to your purchase balance.

Returned Payments:

We will charge your account a \$15 fee if your check or similar payment instrument is not honored or if we must return it to you because it cannot be processed. This fee will be added to your purchase balance.

Cardmember Lists:

On occasion, we make our membership list available to selected companies whose products and services we hope will appeal to cardmembers like you. You may request that your name not be given to outside companies by writing to us at the address listed on your monthly bill or calling us via the 800# on your monthly statement. Please be sure to include your name, address and account number. Allow 8-10 weeks for your request to take effect.

Citibank Classic Checks:

You can use your personalized Citibank Classic checks to purchase goods and services or to obtain cash up to the amount of your available cash advance limit unless that amount will cause you to exceed your credit line. We will treat Citibank Classic checks as a cash advance and will charge them against your cash advance limit. We may decline to honor a Citibank Classic Check if you are over your cash advance limit or credit line, you are in default, your account privileges have been cancelled, or your card has expired. If we do, we will charge you a \$15 fee, which we will add to your cash advance balance. Citibank Classic checks may be used only by the person whose name is printed on them. You may not use Citibank Classic checks to pay any amount which you owe us on this or any other bankcard agreement with us. We will not certify any Citibank Classic checks, nor will we return paid Citibank Classic checks to you.

Lost or Stolen Cards/Citibank Classic Checks:

If your card or Citibank Classic checks are lost or stolen or if you are afraid someone used or may use them without your permission, you must notify us at once by calling the telephone number shown on your monthly statement or the number you get by calling toll-free information or your local Directory Assistance. We may require you to provide us certain information in writing to help us find out what happened. Don't use the card or the Citibank Classic checks after you've notified us, even if you find them or have them returned to you. You may be liable for unauthorized use of your card or Citibank

Classic checks, but not for more than \$50. You won't be liable for any purchases or advances made after you've notified us of the loss or the theft by phone.

Stop Payment:

You may stop payment on a Citibank Classic check by notifying us in writing at P.O. Box 6500, Sioux Falls, South Dakota 57117 or by calling us at the telephone number listed on your monthly statement. If you call, you must confirm the call in writing within fourteen (14) days. A written stop payment order will remain in effect for six (6) months unless renewed in writing. We will charge a \$15 fee when you stop payment on your Citibank Classic check.

Default:

You will be in default if you fail to pay the Minimum Amount Due listed on each monthly billing statement on time, file for bankruptcy, exceed your credit line without our permission, or default on this or any other agreement you have with us. If you are in default, we may close your account and demand immediate payment of the full balance. Don't let this happen. Call us first and let us try to help you.

Collection Costs:

If we have to refer collection of your account balance to a lawyer, you will pay our lawyer's fee plus court costs or any other fees as allowed by law. If we sue to collect and

you win, we will pay your reasonable legal fees and court costs.

Credit Reports:

We may report your performance under this Agreement to credit reporting agencies and secure follow-up credit reports on you, including if you fail to make your minimum payments on time. A bad credit report can significantly harm your ability to obtain credit from other sources. The information we will turn over to our credit reporting agencies will be your name, address, account and social security numbers, the status of your account, and any other information required by law. We will not turn over personal information, such as information relating to specific transactions on your account. Except for our affiliated Citicorp companies, no one else without proper legal authority will be given information about your account. We will try to notify you by phone or by mail of any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice.

Correcting Your Credit Report:

If you think we reported erroneous information about you to a credit reporting agency or wish to learn the names of the agencies we contacted, call us at the 800 number listed on your monthly billing statement. We will promptly investigate the matter; we will contact each credit reporting agency whose records may reflect the error; and we will require them to correct your report if our investigation shows you are right. If we disagree with

you after the investigation, we will tell you in writing or by phone and instruct you how to submit to those agencies a statement of your position that will become a part of your credit record with them. The instructions will include the name, address, and phone number of each such agency, along with other pertinent information.

Closing Your Account:

You may close your account at any time by notifying us in writing. However, you remain responsible to pay the amount you owe us according to the terms of this Agreement. We may close your account or suspend your card privileges or Citibank Classic checks at any time without prior notice. We may also reissue a different card or different checks at any time. You must return the card or the Citibank Classic checks to us upon request.

Changing This Agreement:

We can change this Agreement, including all fees and the annual percentage rate, at any time. However, if we do, we will mail you written notice at least 15 days before the beginning of the billing cycle in which the changes become effective. If you do not agree to the changes, you must notify us in writing within 25 days after the effective date of the changes and pay us the balance, either at once or under the terms of the unchanged Agreement. Otherwise, you will have agreed to the changes in the notice. Use of the card after the effective date of the change shall be deemed acceptance of the new terms, even if the 25 days have not expired.

Delay in Enforcement:

We can delay enforcing our rights under this Agreement without losing them.

Applicable Law:

The terms and enforcement of the Agreement shall be governed by South Dakota and federal law.

For Further Information:

Call us at the telephone number shown on the front of your monthly billing statement. You can also call toll-free information or local directory assistance to get our telephone number.

/s/ Ronald F. Williamson

Ronald F. Williamson	Citibank (South Dakota), N.A.
President & CEO	P.O. box 6000
May 1, 1992	Sioux Falls, SD 57117

What to Do if There's an Error in Your Bill.

Your Billing Rights.

Keep This Notice For Future Use.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us (on a separate sheet) at the address shown on the front of your billing statement. Write to us as soon as possible. We must hear from you *no later than 60 days* after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about
- Please sign your letter.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we

are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 25 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it is finally settled.

If we don't follow these rules, we cannot collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

■ You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current address; and

■ The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

1992 Citibank (South Dakota) N.A.
BBC-SOL-NP 5/92

CITIBANK PREFERRED CARD AGREEMENT

This is your Citibank Preferred Card Agreement. Please read it and keep it for your records. You do not have to sign the Agreement. In the Agreement, the word *card* means either one or more cards; the words, *you*, *your* and *yours* mean the cardmember as well as anyone the cardmember permits to use the card; the words *we*, *us* and *our* mean Citibank (South Dakota), N.A. The words *Citibank Preferred checks* mean one or more checks that we may send to you to access your Citibank Preferred account.

Credit Line:

Your initial credit line will appear on the folder containing your card. A portion of your credit line will be available for cash advances. At our discretion we may change your credit line or cash advance limit at any time. We will notify you if we do, either by mail or through your monthly billing statement. You may request a change to your credit line or cash advance limit by contacting Citibank Customer Service by phone or mail.

Card Uses/Credit Line:

You must sign the card in order to use it. Your initial credit line will appear on the folder containing your card. This full amount is available to buy or lease goods or services wherever the card is honored. A portion of your credit line will also be available for cash advances (cash loans) at any bank or automated teller machine that

accepts the card or by using Citibank Classic checks. The total amount charged on your account, including purchases, cash advances, finance charges, fees, or other charges, must always remain below your credit line.

Additional Cards:

You may request additional cards on your account for yourself or others by contacting Citibank Customer Service. You are responsible for the use of each card according to the terms of this Agreement.

Annual Membership Fee:

You will pay us a non-refundable annual membership fee of \$50. This fee will be added to your purchase balance on your first monthly billing statement and annually thereafter.

Billing:

We will send you a monthly billing statement when there is activity on your account. Your monthly statement will show your new balance, any finance charges, the minimum amount due, and the payment due date. In addition, it will show your current credit line and cash advance limit, an itemized list of current charges, Citibank Classic check transactions, payments and credits, a summary showing separately your purchase account, your cash advance account and finance charges on each, as well as other information concerning your account. You must notify us of a change in your address.

New Balance:

To determine your New Balance, we begin with the outstanding balance on your account at the beginning of each billing period – called the "Previous Balance" on your billing statement. We then add any purchases and cash advances that are recorded on your account and subtract any payments and credits received. We then add any other adjustments (for example, corrections of a prior calculation) and finally add the appropriate finance charges and fees.

Finance Charges on Purchases:

We will add a finance charge if you do not pay the New Balance listed on your last monthly statement in full on or before its payment due date. When you do not pay your New Balance in full (that is, if you choose to revolve), we will assess finance charges on purchases as follows.

■ We start with the purchase balance at the beginning of your monthly billing period and will add to that any unpaid finance charges. This is called the "Previous Balance" on your statement. Your monthly billing period begins the day of your statement date and varies with the number of days in that billing month.

■ On each day of the billing period we subtract payments, we add new purchases, and we make adjustments (e.g., for credited returns, prior statement errors, and the like). This determines the daily balance. Unless we elect to use a later date, we add purchases to the balance as of the date of the purchase.

■ We total the daily balances, and then divide that figure by the number of days in the billing period. This determines the average daily balance, which is the "balance subject to finance charge."

■ We multiply the "balance subject to finance charge" by 1.40%, the monthly periodic rate, which corresponds to a 16.8% **annual percentage rate**. This amount is your **finance charge** on purchases, unless (1) you qualify for a variable **annual percentage rate**, or (2) you default in meeting the requirements of any of your Citibank card-member Agreements.

Variable Annual Percentage Rate/Qualifications:

■ You will qualify for an **annual percentage rate** that may vary each calendar quarter if: 1) you have been a cardmember for twelve (12) months or more; 2) the sum of your Preferred account purchases since you became a member is \$3000 or more, or if you do not meet the purchase requirement, you have a combined balance of at least \$3000 in your checking, savings, Insured Money Market Account or Certificate of Deposit Account with Citibank or a Citibank affiliate; and 3) you have kept all your Citibank credit card accounts in good standing by complying with your cardmember Agreements.

■ We will calculate the variable **annual percentage rate** by adding 7.4% to the rate disclosed as the U.S. Prime Rate reported in the "Money Rates" table of *The Wall Street Journal* on the third Tuesday of March, June, September, and December of each year. For example, because the U.S. Prime Rate was 6.5% on March 17, 1992, the applicable **annual percentage rate** would be 13.9%, which

corresponds to a monthly periodic rate of 1.1583%. If more than one such Prime Rate is published, we may choose the highest of such Prime Rates. In the event that *The Wall Street Journal* ceases to be published or ceases to publish the U.S. Prime Rate, we may refer to the Prime Rate published in any other newspaper of general circulation, or we may substitute a similar reference rate at our sole discretion.

■ Once you qualify, the variable **annual percentage rate** will take effect on all the new purchases you make from the first day of your billing period in which you qualify. As long as you continue to qualify, any increase or decrease in the variable **annual percentage rate** will take effect on the first day of your billing period directly following the month in which we calculate the rate. Each time the rate changes, it will be applied to the balance of all the purchases you have made from the first billing period in which you qualified. The **annual percentage rate** in effect and any subsequent changes to it will appear on your monthly billing statement. Balances on purchases made prior to the first billing period in which you qualified will continue to be subject to the 16.8% **annual percentage rate**. As long as you continue to qualify, the variable **annual percentage rate** will not be lower than 11.9% or higher than 16.8%.

■ If you default in meeting the requirements of this or any of your other Citibank credit card account Agreements, we will increase the **annual percentage rate** (whether the variable rate or the standard rate of 16.8%) on all your purchase balances (including all previous balances) to 19.8%, which corresponds to a monthly periodic rate of 1.65%. However, once all your accounts have

been in good standing for twelve (12) consecutive months, we will reevaluate your eligibility for the variable rate or the standard 16.8% **annual percentage rate**.

Finance Charges On Cash Advances:

We will add a finance charge for your cash advances from the day you take the cash advance until the day we receive payment in full. We determine the amount of the finance charge as follows:

- We start with the cash advance balance at the beginning of your monthly billing period and will add to that any unpaid cash advance finance charges. This is called the "Previous Balance" on your statement.

- On each day of the billing period we subtract payments, we credit adjustments, and we add new cash advances, other adjustments, and unpaid finance charges. This determines a daily balance. Unless we elect to use a later date, we add cash advances to the balance as of the day they are taken.

- We total the daily balances, and then divide that figure by the number of days in the billing period. This determines the "balance subject to finance charge."

- We multiply the "balance subject to finance charge" by 0.05424%, the daily periodic rate, which corresponds to a 19.8% **annual percentage rate**. We then multiply the resulting amount by the number of days in the billing period. This amount is your **finance charge** on cash advances.

Finance Charges – Cash Advance Transaction Fee:

We will also add an additional **finance charge** for each cash advance transaction. If you obtain the cash advance at an Automated Teller Machine (ATM), at a bank or other financial institution, or through the use of a Citibank Preferred check, the additional **finance charge** will be equal to 2% of the amount of each cash advance; however, it will not be less than \$2.00 or more than \$10.00. The cash advance transaction fee will cause the **Annual Percentage Rate** on your billing statement on which the transaction first appears to exceed the rate stated above.

Minimum Finance Charge:

If your finance charge for purchases or cash advances is less than 50¢, we will impose in each case a minimum **finance charge** of 50¢. We will charge the amount at our discretion to either your purchase or cash advance balance.

Charges Made in Foreign Currencies:

FOR VISA ACCOUNTS: If you incur a charge in a foreign currency, the charge will be converted by Visa International into a U.S. dollar amount. Visa International will use the procedures set forth in its Operating Regulations in effect at the time that the transaction is processed. Currently, those Regulations provide that the currency conversion rate to be used is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent

in each case; Visa retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

FOR MASTERCARD ACCOUNTS: If you incur a charge in a foreign currency, the charge will be converted by MasterCard International, Inc., into a U.S. dollar amount. MasterCard International will use the conversion procedures published from time-to-time to its members at the time that the transaction is processed. Currently, the currency conversion rate used to determine the transaction amount in U.S. dollars is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case; MasterCard retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date

Minimum Amount Due:

The minimum payment will be the total of the following three items:

■ New Balance	Amount
• Less than \$50	Total New Balance
• Between \$50 and \$1,800.....	\$50 or the billed finance charge, if greater than \$50.
• More than \$1,800.....	1/36th of your New Balance, rounded to the next whole dollar,

- Any amount past due, and
- Any amount in excess of your credit line.

You must pay at least the minimum payment each month, but you may pay more than that amount at any time without a penalty. The sooner you pay your New Balance, the less you will have to pay in finance charges.

Payments:

We can accept late or partial payments as well as payments that are marked "paid in full" or other restrictive endorsements, without losing any of our rights under this Agreement. If you pay more than the minimum amount due, we will allocate the excess amount to your purchase or cash advance balance at our discretion, unless you tell us otherwise. You must pay us in U.S. dollars drawn on funds on deposit in the United States. However, we reserve the right to accept payments made in Canadian currency. If we do, we will charge you a currency conversion fee based upon the "spot" rates existing at the time of conversion. Please do not send us cash payments.

Exceeding Your Credit Line:

We will charge your account an over the credit line fee of \$10 for each billing period in which your New Balance exceeds your credit line. This fee will be added to your purchase balance.

Late Payments:

Your purchase account will be charged a late payment fee of \$6 if your minimum amount due is not received within 15 days after the payment due date. If we do not receive that minimum amount due by the next payment due date, your purchase account will be charged an additional late payment fee. This additional fee will be the greater of: 1) \$15, or 2) 0.65% of your total New Balance (for your purchase and cash advance accounts) on your current statement, excluding this additional late payment fee. This additional late payment fee will continue to be assessed monthly until your account is less than 30 days past due.

Returned Payments:

We will charge your account a \$15 fee if your check or similar payment instrument is not honored or if we must return it to you because it cannot be processed. This fee will be added to your purchase balance.

Cardmember Lists:

On occasion, we make our membership list available to selected companies whose products and services we hope will appeal to cardmembers like you. You may request that your name not be given to outside companies by writing to us at the address listed on your monthly bill or calling us via the 800# on your monthly statement. Please be sure to include your name, address and account number. Allow 8-10 weeks for your request to take effect.

Citibank Preferred Checks:

You can use your personalized Citibank Preferred checks to purchase goods and services or to obtain cash up to the amount of your available cash advance limit unless that amount will cause you to exceed your credit line. We will treat Citibank Preferred checks as a cash advance and will charge them against your cash advance limit. We may decline to honor a Citibank Preferred Check if you are over your cash advance limit or credit line, you are in default, your account privileges have been cancelled, or your card has expired. If we do, we will charge you a \$15 fee, which we will add to your cash advance balance. Citibank Preferred checks may be used only by the person whose name is printed on them. You may not use Citibank Preferred checks to pay any amount which you owe us under this or any other bankcard agreement with us. We will not certify any Citibank Preferred checks, nor will we return paid Citibank Preferred checks to you.

Stop Payment:

You may stop payment on a Citibank Preferred check by notifying us in writing at P.O. Box 6062, Sioux Falls, South Dakota 57117 or by calling us at the telephone number listed on your monthly statement. If you call, you must confirm the call in writing within fourteen (14) days. A written stop payment order will remain in effect for six (6) months unless renewed in writing. We will charge a \$15 fee when you stop payment on your Citibank Preferred check.

Lost or Stolen Cards/Citibank Classic Checks:

If your card or Citibank Preferred checks are lost or stolen or if you are afraid someone used or may use them without your permission, you must notify us at once by calling the telephone number shown on your monthly statement or the number you get by calling toll-free information or your local Directory Assistance. We may require you to provide us certain information in writing to help us find out what happened. Don't use the card or the Citibank Preferred checks after you've notified us, even if you find them or have them returned to you. You may be liable for unauthorized use of your card or Citibank Preferred checks, but not for more than \$50. You won't be liable for any purchases or advances made after you've notified us of the loss or the theft by phone or by writing at P.O. Box 6062, Sioux Falls, South Dakota 57117.

Default:

You will be in default if you fail to pay the Minimum Amount Due listed on each monthly billing statement on time, file for bankruptcy, exceed your credit line without our permission, or default on this or any other agreement you have with us. If you are in default, we may close your account and demand immediate payment of the full balance. Don't let this happen. Call us first and let us try to help you.

Collection Costs:

If we have to refer collection of your account balance to a lawyer, you will pay our lawyer's fee plus court costs or any

other fees as allowed by law. If we sue to collect and you win, we will pay your reasonable legal fees and court costs.

Credit Reports:

We may report your performance under this Agreement to credit reporting agencies and secure follow-up credit reports on you, including if you fail to make your minimum payments on time. A bad credit report can significantly harm your ability to obtain credit from other sources. The information we will turn over to our credit reporting agencies will be your name, address, account and social security numbers, the status of your account, and any other information required by law. We will not turn over personal information, such as information relating to specific transactions on your account. Except for our affiliated companies, no one else without proper legal authority will be given information about your account. We will try to notify you by phone or by mail of any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice.

Correcting Your Credit Report:

If you think we reported erroneous information about you to a credit reporting agency or wish to learn the names of the agencies we contacted, call us at the 800 number listed on your monthly billing statement. We will promptly investigate the matter; we will contact each credit reporting agency whose records may reflect the error; and we will require them to correct your report if our investigation shows you are right. If we disagree with you after the investigation, we will tell you in writing or

by phone and instruct you how to submit to those agencies a statement of your position that will become a part of your credit record with them. The instructions will include the name, address, and phone number of each such agency, along with other pertinent information.

Closing Your Account:

You may close your account at any time by notifying us in writing. However, you remain responsible to pay the amount you owe us according to the terms of this Agreement. We may close your account or suspend your card privileges or Citibank Preferred checks at any time without prior notice. We may also reissue a different card at any time. You must return the card or the Citibank Preferred checks to us upon request.

Changing This Agreement:

We can change this Agreement, including all fees and the annual percentage rate, at any time. However, if we do, we will mail you written notice at least 15 days before the beginning of the billing cycle in which the changes become effective. If you do not agree to the changes, you must notify us in writing within 25 days after the effective date of the changes and pay us the balance, either at once or under the terms of the unchanged Agreement. Otherwise, you will have agreed to the changes in the notice. Use of the card after the effective date of the change shall be deemed acceptance of the new terms, even if the 25 days have not expired.

Delay in Enforcement:

We can delay enforcing our rights under this Agreement without losing them.

Applicable Law:

The terms and enforcement of the Agreement shall be governed by South Dakota and federal law.

For Further Information:

Call us at the telephone number shown on the front of your monthly billing statement. You can also call toll-free information or local directory assistance to get our telephone number.

Ronald F. Williamson	Citibank (South Dakota), N.A.
President & CEO	P.O. Box 6000
June 1, 1992	Sioux Falls, SD 57117

What to Do if There's an Error in Your Bill.

Your Billing Rights.

Keep This Notice For Future Use.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us (on a separate sheet) at the address shown on the front of your billing statement. Write to us as soon as possible. We must hear from you *no later than 60 days* after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about
- Please sign your letter

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we

are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due

If you fail to pay the amount that we think you owe we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 25 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it is finally settled.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

■ You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current address; and

■ The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

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